IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 307 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH @ HARSHADBHAI PARSHOTTAMDAS
Versus
STATE OF GUJARAT

Appearance:
MS BANNA S DUTTA for Petitioner
MR.S.P.DAVE,APP for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE J.R.VORA

Date of decision: 06/09/2000

ORAL JUDGEMENT (Per : K.R.Vyas,J.)

1. The appellant who is the original accused in

Sessions Case No. 341 of 1989 has filed the present appeal challenging the judgment and order of conviction dated 30.1.1990 passed by the learned Addl.City Sessions Judge, Ahmedabad, convicting him for an offence punishable under section 302 of the IPC and section 135(1) of the Bombay Police Act and sentencing him to undergo R.I. for life and to pay a fine of Rs. 250/-, in default, to undergo further R.I. for two months and for offence punishable under section 135(1) of the Bombay Police Act, sentencing him to undergo R.I.for four months and to pay a fine of Rs.100/-, in default, to undergo further R.I.for four weeks.

2. The appellant is convicted for committing murder of Labhuben, wife of the complainant Maganbhai Prajapati, PW 7 Ex.22. The appellant and the complainant are neighbours staying in Om Society of Amraiwadi area of the City of Ahmedabad. It is the case of the prosecution that on the day prior to the incident i.e. on 23.7.1989, the appellant had a quarrel with the deceased as he was not allowed to enter their house and the appellant sustained knife injuries at the hands of the son of the complainant. The appellant informed about the said incident to the complainant when the complainant returned to his house from work. According to the complainant,as the people of the locality were talking about the illicit relationship between his wife and the appellant, a quarrel took place and the complainant and deceased decided to vacate the premises and to shift to some other place.Accordingly, on 24.7.1989, at about 2.30 p.m., the deceased left her house in order to inquire about the vacant premises. Five minutes after her leaving, the complainant was informed by some passerby that Ramesh Purshottam Prajapati, son of an old lady had inflicted knife blows to his wife Labhuben and she was lying on the road. The complainant and his daughter Dina immediately went to the spot i.e. towards the end of the society and found his wife lying on the ground in a pool of blood having sustained four to five stab injuries. On being inquired about the incident, the deceased told him that Ramesh, the son of an old lady had inflicted knife injuries to her. The deceased was immediately taken to LG Hospital in a rickshaw where she was admitted and examined by the doctor on duty. However, she succumbed to the injuries at about 3.30 p.m. Police Inspector, Amraiwadi Police Station K.C.Bava, PW 9 Ex. 25 recorded complaint of the complainant and started investigation and on completion of the same, submitted chargesheet against the appellant. The learned trial judge framed charge at Ex.3 against the appellant. The appellant pleaded not guilty and claimed to be tried. The defence

of the appellant was of total denial. After appreciating the evidence on record, the learned judge found the appellant guilty of committing murder of the deceased Labhuben and passed an order of conviction and sentence as stated above.

3. Ms.Banna Dutta, learned Counsel appearing for the appellant, after taking us through the evidence on record, submitted that the learned trial judge has committed an error in convicting the appellant. The learned Counsel submitted that there is no evidence worth the name on record to connect the appellant with the commission of the crime. By criticizing the evidence of the complainant, it was submitted that his evidence does not get any corroboration from other witnesses. The learned Counsel further submitted that the evidence of Bharat Prajapati, PW 6 Ex. 21 before whom the alleged extra judicial confession is made is required to be ignored on the ground that he is a got up witness.

4 Mr.S.P.Dave, learned APP, on the other hand, supported the judgment of the trial court in toto.

5. Dr. Gaurang Kothari, PW 1 Ex.5, who performed the post-mortem of the dead body of the deceased on 25.7.1989, noticed the following external injuries on the person of deceased Labhuben:

"(1) A stab wound on right side of chest 7 cm right to midline and 7 cm below and 6 cm medial to right nipple. Stab wound is 1.5 cm long with 0.7 cm gaping. Wound is slightly obliquely placed.
(2) Stab wound on left anterior axillary line, obliquely placed, 2 cm long with 0.7 cm gaping. It is at level of 6th intercostal space. It is muscle deep.
(3) Stab wound 2 cm long with 0.7 cm gaping on left side of chest, 8 cm left and 3 cm below left nipple, near anterior axillary line on 6th intercostal space.
(4) Stab wound on left side of back, just lateral to lateral boarder of left scapula. Size 1.5 cm long with 0.7 cm gaping. It is muscle deep.
(5) Stab wound on back on right side on lower 1/3 part of back; 8 cm right to midline on back side 1.5 cm long with 0.7 cm gaping.
(6) Stab wound on posterior lateral part on left arm muscle deep. Size 1 cm.
(7) Stab wound on left arm on posterior lateral part size 0.5 cm and muscle deep.
(8) Abrasion on upper part of chest size 0.5 cm x 0.5

cm on 4th upper lateral to nipple and covered with dry clotted blood."

He also noticed the following internal injuries:

"(1) External injury no.1 of column no. 17 passes through in subcutaneous tissues and 6th intercostal muscles and then passes backwards, downwards and laterally and passes through diaphragm and has entered 4 cm deep in substance of liver. Tract is about 8 cm long.
(2) External injury no.3 of column no. 17 has passed through skin, subcutaneous tissues, intercostal muscles of 6th intercostal space and pierced through pleura of left lung and medial border of left lung and out pericadium of apex and pierced myocardium at apex and entered in left ventricle of heart. Right side of thoracic cavity contained about 1000 cc of blood. Wound passes upwards backward and medially. Tract of wound is about 7 cm long."

Internal injury no.1 was corresponding to external injury no.1 and internal injury no.2 was corresponding to external injury no.3. All injuries were antemortem injuries. According to the doctor, the cause of death was shock due to haemorrhage due to stab injuries sustained by the deceased. In the cross examination, Dr. Kothari has clearly admitted that looking to the injuries sustained by the deceased, there must have been profuse bleeding. Looking to the nature of injuries, there was profuse bleeding and within half an hour, the patient would have become unconscious. In view of this medical evidence, it is clear that the deceased died a homicidal death which resulted because of multiple stab injuries.

6. According to the complainant Maganbhai Kunvarjibhai, PW 7 Ex.22, the deceased left the house at about 2.30 p.m. in search of vacant house. After about 10 minutes, one person came to his house and informed him that the deceased was attacked by Ramesh, the son of an old lady and she was lying at the outskirts of the society. On reaching the spot, the complainant saw that the deceased was lying in a pool of blood and profusely bleeding having sustained five stab injuries on her chest. On being inquired, the deceased told him that Ramesh had inflicted knife blows to her. According to him, the deceased was taken in rickshaw to LG Hospital where the deceased expired at about 3.30 p.m. He filed complaint before the police in the hospital itself.He has

identified the appellant as the killer of his wife. In the cross examination, he has admitted that about 100 to 200 persons had gathered where his wife was lying. He has clarified that when he was talking to his wife,only two to four persons were there, but he is not able to identify them. He had not even called private doctors who are having their clinics near the shopping centre. On reaching the hospital, he informed the Constable on Duty about the incident and also gave name of the appellant who caused injuries with knife to his wife. According to him, he had given all the details about the address of the appellant. According to him, he was read over the complaint and his signature was taken on the complaint. He has admitted that the stranger who informed him about the incident did not disclose the name of the assailant. However, he only informed that son of an old lady had inflicted blows with knife. He has denied the suggestion that when he reached the spot, because of the profuse bleeding, his wife had become unconscious. He has also denied the suggestion that the body of the deceased had become cool and she was not in a position to speak. According to him, his wife died about one-and-half hours after she was admitted in the hospital. He has admitted that he had given the names of Ghanshyam and Ramesh to the police, as assailants on the basis of suspicion. He has admitted that he had not given the details of Ghanshyam and Ramesh to the police. He has also admitted that the police had not called him to identify Ghanshyam in an identification parade. Finally,he has admitted that he had not stated in his statement that Ramesh (appellant) had beaten his wife on 23.7.1989.

Reading the evidence of the complainant together with the evidence of Dr.Kothari, it is clear that the deceased sustained number of stab injuries and was profusely bleeding. The condition of the deceased was very serious.As per the medical evidence, within about half-an-hour, the deceased would become unconscious. In such circumstances, doubt arises about the version of the complainant when he has stated that the deceased informed him that Ramesh caused injuries with knife. Even according to the complainant, when the deceased informed the complainant about the incident, many persons had gathered there. However, no attempt has been made by the police to examine anybody. The fact that the complainant had given only the first name of the appellant without giving any further details, it becomes absolutely doubtful regarding the involvement of the appellant in the commission of crime.

7. The Investigating Officer has made a futile attempt to examine one Purshottam Agrawal, PW 5 Ex. 20. The incident in question had taken place near a pan bidi shop of the said witness. This witness has not supported the prosecution and he has been declared hostile. In view of the fact that no attempt was made by the police to hold identification parade to identify the appellant and the appellant, for the first time, was identified as a person who committed crime also raises doubt regarding the manner in which the investigation is carried out. In view of the clear admission of the complainant in his evidence that he had given the names of one Ghanshyam and Ramesh to the police on the basis of suspicion, it becomes clear that the complainant had not given the names on the basis of information received from the deceased, but their names were given on the basis of suspicion only. Since he has admitted the fact that he had not given all the details about Ghanshyam and Ramesh to the police would further go to raise a doubt regarding the involvement of the appellant in the commission of the crime. According to the Investigating Officer KC Bava, on the basis of the Wordi received from the hospital at 16.00 hours on the day in question, he had gone to the hospital and recorded the complaint of the complainant. Thus, the complaint was recorded after 4.00 p.m. However, before the complaint was recorded, Amraiwadi Police Station had already received the information about cognizable offence having taken place at about 15.30 hours.

8. Ghela Raja, PW 3 Ex. 12 who was PSO at the police station from 12.00 hours to 16.00 hours received Wordi at 3.30 p.m. from the Constable on Duty stationed at LG Hospital which was recorded by Constable Ratanbhai Zala as per the instructions given by Ghelabhai. Reading the Wordi Ex. 13, it appears that information was conveyed from LG Hospital to the police station to the effect that "Yesterday i.e. on 23.7.1989, at about 5.00 p.m., Ghanshyam and Ramesh, the names of their father is not known, had gone to the house of Labhuben (deceased) in drunken condition and a quarrel took place. The said persons today i.e. on 24.7.1989 at 2.30 p.m., with a view to take revenge, inflicted knife blows on the chest of Labhuben and she is brought by her husband to the LG Hospital and she is unconscious."

In view of this Wordi Ex. 13, it is clear that there were two assailants, namely Ghanshyam and Ramesh. For the reasons best known, the Head Constable to whom the said information was conveyed by the complainant is not examined. However, the fact remains that the

complainant had disclosed the names of two assailants. In other words, Ramesh alone was not responsible for causing injuries, but one Ghanshyam was also equally responsible. Reading this information together with the admission of the complainant in his evidence that he had given the names of two assailants to the police on the basis of suspicion, it will clearly go to show that the complainant had not given the name of the appellant on the basis of the information he had received from the deceased. It is quite probable that because of multiple injuries sustained by the deceased, it was not possible for her to tell anything about the assailants and/ or the incident and, therefore, the complainant was required to admit in his evidence that he had disclosed the names of the appellant as well as one Ghanshyam on the basis of suspicion. In our opinion, the evidence of the complainant, in no circumstances, can inspire our confidence and on such evidence, no conviction can be based.

9. On the basis of the information received by Amraiwadi police station, PSI Bharatsinh Vaghela immediately rushed to LG Hospital. However, before he could do anything, namely before he could inquire about the assailants, PI KC Bava reached the hospital and, therefore, PSI Vaghela left the hospital. In our opinion, the evidence of PSI Vaghela does not throw any light on the incident.

10. The prosecution has tried to place reliance on the evidence of Bharatkumar Prajapati,PW 6 Ex 21. It is the case of the prosecution that the appellant had made an extra judicial confession before him. This witness was at the relevant time serving in Vijay Chemicals Works which is quite nearer to Agrawal Pan Corner. According to this witness, for doing some work, he had gone to Dinesh Chemicals on his motor cycle and was returning at home at about 2.30 p.m. and when he reached Agrawal Pan Corner, he saw crowd of people. He also saw the appellant coming with an open knife and told him to take him to the police station. On being asked about the incident, the appellant told him that on the previous day, he had a quarrel with the son of Labhuben,the deceased and her son had caused him knife injuries and, therefore, he inflicted knife blows to Labhuben. This witness, instead of taking the appellant to the police station, by giving evasive reply, went away to his factory and came to know about the death of Labhuben in the evening. According to him, his statement was recorded on the next day. In the cross examination, he has stated that near Pan Corner, about 200 to 500 persons

had gathered. However,he had not seen any pool of blood there. He neither had any talk with anybody nor did he inquire about the incident from any lorriwalas. According to him, the police had come to his factory for the purpose of recording his statement. He has admitted that till the police came to him for the purpose of recording his statement, he did not inform anybody about the appellant having met him and told him about causing injuries with knife to the deceased. He has denied the suggestion that the complainant being his relative, he was giving false evidence.

Reading the evidence of this witness, frankly speaking, in our opinion, it does not inspire our confidence. He is clearly a got up witness. Even though he has admitted that there was a police chowky on his way to his office and that he can reach Amraiwadi police station within five minutes on scooter, he did not inform police about the incident and/or about the alleged confession made by the appellant. We fail to understand as to how the police had gone to his factory for the purpose of recording his statement on the next day.

11. PI K.C.Bava, PW 9, in his cross examination has stated that from the statement of Ghanshyam who is the brother of the accused, it was disclosed that the appellant had gone to the factory of one Bansibhai and he, therefore, went to the said factory and on making inquiry, he found out the name of this witness to be Bharatkumar Prajapati. Thus, from the statement of Ghanshaymbhai, police came to know about this witness Bharatkumar.Therefore, we are of the opinion that he is not a natural witness and the possibility of making extra judicial confession alleged to have been made by the appellant to this witness at the behest of police cannot be ruled out. In any case, extra judicial confession being a weak piece of evidence, in absence of any corroboration, it is required to be ignored. In view of the fact that once the complainant is not clear about the assailants and he discloses the name of not only the appellant but also of one Ghanshyam, it will not be possible for us to rely on the evidence of this witness Bharatkumar when he comes forward with the say that the appellant made an extra judicial confession before him. Thus, the evidence of the prosecution witnesses, in our opinion, does not inspire any confidence. They are not truthful witnesses and no conviction can be based relying upon their testimony. Unfortunately, the learned trial judge has misdirected himself in convicting the appellant relying on such evidence and the so-called version of PI KC Bava who has stated that the appellant himself gave a

complaint with respect to the incident having taken place on 23rd against Nagin, the son of the deceased for an offence punishable under section 324 of the IPC and, therefore, the identity of the appellant is established. Surprisingly, the said complaint is not produced on record. Assuming that the appellant had given such a complaint, in view of weak evidence against him, it is extremely doubtful regarding his involvement in the commission of the offence in question. In any case, the appellant deserves benefit of doubt.

12. In view of the aforesaid discussion, in our opinion, the learned trial judge has committed an error in convicting the appellant for the offences for which he was charged.

13. In the result, we set aside the judgment and order of conviction passed by the learned Addl.City Sessions Judge, Ahmedabad in Sessions Case No. 341 of 1989 dated 30.1.1990 and direct the appellant Ramesh Harshadbhai Parshottamdas to be set at liberty forthwith if not required in any other case. Appeal allowed accordingly.

---

sonar/-